

Amendment No. 1 to SB1925

Southerland
Signature of Sponsor

AMEND Senate Bill No. 1925*

House Bill No. 2056

by deleting all the language after the caption and substituting instead the following:

WHEREAS, it is the intent of the General Assembly to establish reasonable and uniform requirements to protect landowners and communities from the potential hazards and costs associated with abandoned energy-generating facilities while also protecting property rights and the positive business environment in the State of Tennessee, the reliability of the electrical grid, and the ability of the State of Tennessee to encourage economic development, quality jobs, and business investments that require low-cost electricity from new renewable energy sources; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 9, Part 2, is amended by adding the following language as a new section.

66-9-207. Solar power facility agreements.

(a) As used in this section, unless the context otherwise requires:

(1) "Decommissioning cost" means the estimated cost of performing the removal and restoration obligations set forth in subsection (c), less the estimated salvage value of the components of the solar power facility as of the date of removal;

(2) "Grantee" means a person, other than a public utility, as defined by § 65-4-101, who leases property from a landowner or holds an easement interest pursuant to a solar power facility agreement;

(3) "Landowner" means the owner or owners of a fee simple interest in land;

(4) "Premises" means the real property leased or granted by a landowner to a grantee pursuant to a solar power facility agreement;

(5)

(A) "Solar power facility" means, collectively, a device or structure, or series thereof, that provides for the collection of solar energy for electricity generation, together with all facilities and equipment, other than any facility or equipment owned by a public utility, as defined by § 65-4-101, located proximate to and in support of the operation of such electricity generation device or structure, including, without limitation, all underground and aboveground electrical collection, distribution, and transmission lines; inverters; transformers; substations; energy storage facilities; telecommunications equipment and communication lines; meteorological towers; maintenance yards; switchgear; fences; and foundations supporting other components of the solar power facility; and

(B) "Solar power facility" does not include a solar-generating device or structure that is less than ten megawatts (10 MW) in size, measured in alternating current at the point of interconnection to the electrical grid, unless the application of this part is expressly provided for in the solar power facility agreement; and

(6) "Solar power facility agreement" means a lease or easement agreement for real property between a grantee and a landowner for the construction, installation and operation of all or a part of a solar power facility on such real property that generates electricity primarily for use and consumption off the premises.

(b) All solar power facility agreements:

(1) Must provide, at a minimum, that the grantee shall, upon or prior to the expiration or termination of the solar power facility agreement, safely remove or cause the removal of all components of the solar power facility located on the premises, except for any electrical or communications lines buried more than three feet (3') below the surface grade of the land, and restore the land comprising the premises to, as near as reasonably possible, its condition as of the date of the commencement of construction of the solar power facility; and

(2) Must either contain or provide that the grantee shall deliver to the landowner a decommissioning plan detailing the grantee's plan for performing or causing the performance of the obligations in subdivision (b)(1).

(c)

(1) A solar power facility agreement must require the grantee to obtain and deliver to the landowner financial assurance in the following amounts to secure the performance of the grantee's removal and restoration obligations in subsection (b):

(A) No less than five percent (5%) of the decommissioning cost on the date the solar power facility commences commercial operation;

(B) No less than fifty percent (50%) of the decommissioning cost on the tenth anniversary of the date the solar power facility commences commercial operation; and

(C) No less than the decommissioning cost on the fifteenth anniversary of the date the solar power facility commences commercial operation.

(2) Acceptable forms of financial assurance must be set forth in the solar power facility agreement and must include one (1) or more of the following in the amount required by subdivision (c)(1):

(A) A surety bond;

- (B) A collateral bond;
- (C) An irrevocable letter of credit;
- (D) A parent guaranty;
- (E) Cash;
- (F) A cashier's check;
- (G) A certificate of deposit;
- (H) A bank joint custody receipt;
- (I) An approved negotiated instrument not described in subdivisions (c)(2)(A)-(H); or
- (J) A combination of the forms of security described in subdivisions (c)(2)(A)-(I).

(3) A landowner has the right to expressly extend the date the financial assurance required by this subsection (c) is first delivered to the landowner to no later than the fifteenth anniversary of the date the solar power facility commences commercial operation.

(d) This section does not prohibit a local government from regulating solar power facilities pursuant to its zoning authority granted in title 13, except that a local government shall not impose removal or restoration obligations or require financial assurance securing such obligations that are more stringent than or additional to those provided for in this section.

(e) Except as provided in subdivision (c)(3), a provision of a solar power facility agreement that purports to waive a right or exempt a grantee from a liability or duty established by this section is void unless the landowner and the grantee are affiliated entities.

(f) A person who is harmed by a violation of this section is entitled to relief provided under title 29, chapter 14.

(g) The requirements of this section only apply to solar power facility agreements initially entered into on or after the effective date of this act. If a grantee and landowner agree to amend a solar power facility agreement initially entered into before the effective date of this act, the parties may include the rights and obligations established by this section, and this section must govern such amended agreements.

SECTION 2. The heading to a section in this act is for reference purposes only and does not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the heading in any compilation or publication containing this act.

SECTION 3. This act takes effect on June 1, 2022, the public welfare requiring it.